

REMARKS

The above Amendments and these Remarks are submitted under 35 U.S.C. § 132 and 37 C.F.R. § 1.111 in response to the Office Action mailed June 19, 2006.

Summary of the Examiner's Action and Applicant's Response

The Examiner has rejected Claims 1-4, 6-12, 15-17, 19, 24-27, 29, 31-32, 34-36, 39, 44-45 and 54-55 under 35 U.S.C. 102(e) as being anticipated by Carr, U.S. Patent Application Publication No. 2003/0113043. Claims 5, 18, 28, 30, 33, 37, 40-41 and 46-53 have been rejected under 35 U.S.C. § 103(a) as being obvious based on Carr. The Examiner has rejected Claims 13 and 14 under 35 U.S.C. § 103(a) as being obvious based on Miller, U.S. Patent Application Publication No. 2003/10046690. Claims 20-23, 38 and 42-43 have been rejected under 35 U.S.C. § 103(a) as being obvious based on Carr in view of Miller. Applicant respectfully traverses the rejections.

In this amendment, Applicant has amended Claims 1-3, 15, 18-20, 24, 25, 30, 33, 34, 36, 39, 45, and 53. Claims 16, 17, and 26-29 have been cancelled. After entry of this amendment, Claims 1-15, 18-25, and 30-55 will be pending.

Response to the Rejection of Claims 1-4, 6-12, 15-17, 19, 24-27, 29, 31-32, 34-36, 44-45, 54-55 under 35 U.S.C. § 102(e)

Claims 1-4, 6-12, 15-17, 19, 24-27, 29, 31-32, 34-36, 39, 44-45 and 54-55 have been rejected under 35 U.S.C. 102(e) as being anticipated by Carr. Claim 1 has been amended to further define the invention. Claim 1, as amended, is a method of transmitting data that includes the steps of transmitting a video program **and at least one trigger** employing a first television channel operating at a first frequency; and transmitting enhancement data employing a second channel operating at a second frequency wherein said first frequency is different from said second frequency.

Applicant agrees with the Examiner that Carr discloses enhancements having components including triggers. (Paragraph 0020] Applicant respectfully submits that Carr does not teach or suggest transmitting triggers separate from the enhancements. Carr discloses transmitting A/V content, i.e. a video program, over a transport medium (22 in FIG. 1A) and transmitting

enhancement data either over a separate secondary link 20. (FIG. 1A, paragraph [0025]. Carr discloses alternatively transmitting enhancement data over a link that is part of the same delivery mechanism as the A/V content **but is not associated with any A/V program**, e.g., an MPEG-2 transport stream with ancillary information **in data-only program separate from the A/V programs**)." (Paragraph [0025]). (Emphasis added). Applicant respectfully submits that Carr does not teach or suggest transmitting triggers in the same channel as the video program. Further, Applicant respectfully submits that Carr does not teach or suggest transmitting triggers in a different channel than the enhancement data, as claimed in Claim 1. Applicant respectfully submits, therefore, that Claim 1 is not anticipated by Carr.

Claims 2-4, 6-12, 15, 19, 24, 25, 31, and 32 depend directly or indirectly from Claim 1 and are thus respectfully submitted as not being anticipated by Carr.

Further regarding Claim 2, Claim 2 has been amended to further define the invention and claims the method of Claim 1 wherein said first frequency corresponds to a television service channel, and wherein said second frequency does not correspond to the frequency of a television service channel. Regarding the term "television service channels", the present specification describes that "[t]elevision broadcast typically employs frequency division multiplexed signals wherein a plurality of programs is broadcast simultaneously, each in a predefined frequency range, or channel. Figure 2 is illustrative of the NTSC frequency map for standard 6-MHz cable television channel bands in North America." The map in Figure 2 identifies illustrative "television service channels" 2-13, 14-22, and 23-158 of the NTSC frequency map. Applicant respectfully submits that Carr does not disclose transmitting a video program and at least one trigger employing a television service channel and transmitting enhancement data using a television channel that is not a television service channel, as claimed in Claim 2. Applicant respectfully submits, therefore, that Claim 2 is not anticipated by Carr for this additional reason.

Further regarding Claim 3, Claim 3 has been amended to further define the invention. Claim 3, as amended, states that only a portion of the second channel is utilized for enhancement data. Applicant respectfully submits that Carr does not disclose a method transmitting a video program and triggers on a first channel and transmitting enhancement data on a second channel, using only a portion of the second channel, as claimed in Claim 3. Applicant respectfully submits, therefore, that Claim 3 is not anticipated by Carr for this additional reason.

Claim 34 has been amended to be a system counterpart for Claim 1, as amended. Applicant

respectfully submits that Claim 34 is not anticipated by Carr for the same reasons given above for Claim 1. Claims 35, 36, 39, and 44 depend directly or indirectly from Claim 34 and thus are respectfully submitted as not being anticipated by Carr for the same reasons given above for Claim 34.

Claim 45 has been amended to further define the claim as a receiver counterpart to Claim 1, as amended. Applicant respectfully submits that Claim 45 is not anticipated by Carr for the same reasons as given above for Claim 1. Claims 54 and 55 depend directly or indirectly from Claim 45 and thus are respectfully submitted as not being anticipated by Carr for the same reasons given above for Claim 45.

Response to the Rejection of Claims 5, 18, 28, 29, 30, 33, 37, 40, 41, and 46-53
under 35 U.S.C. § 103(a)

Claims 5, 18, 28, 30, 33, 37, 40, 41, and 46-53 have been rejected under 35 U.S.C. 103(a) as being obvious based on Carr. Applicant respectfully submits that Claim 1 is non-obvious based on Carr for the same reasons given above. Claims 5, 18, 30, and 33 depend directly or indirectly from Claim 1 and thus are respectfully submitted as being non-obvious based on Carr for the same reasons given above for Claim 1. Applicant respectfully submits that Claim 34 is non-obvious based on Carr for the same reasons given above. Claims 37, 40, and 41 depend directly or indirectly from Claim 34 and thus are respectfully submitted as being non-obvious based on Carr for the same reasons given above for Claim 34. Applicant respectfully submits that Claim 45 is non-obvious based on Carr for the same reasons given above. Claims 46-53 depend directly or indirectly from Claim 45 and thus are respectfully submitted as being non-obvious based on Carr for the same reasons given above for Claim 45.

Further regarding Claim 5, this claim is directed to the method of claim 1 wherein said second channel employed for transmitting enhancement data is of smaller bandwidth than said first channel. The Examiner stated that "Carr fails to explicitly disclose that the **service channel** is of smaller bandwidth than the primary or first channel. However, the examiner takes Official Notice that it is notoriously well known in the art to have **service channel** that is of smaller bandwidth than the primary channels so as to conserve the system's bandwidth. Consequently, it would have been obvious to one of ordinary skill in the art to modify the service channel of Carr to have a smaller bandwidth than the primary channel for the stated advantage." Applicant respectfully submits that

the Examiner refers to a service channel having a smaller bandwidth than a “primary” or first channel. Applicant respectfully submits that Claim 5 does not refer to a “service channel”, therefore, even assuming *arguendo* that it is notoriously well known in the art to have a **service channel** that is of smaller bandwidth than the “primary” channels, that does not teach or suggest the method as claimed in Claim 5. Moreover, regarding the Examiner characterization of it being notoriously well known in the art to have **service channel** that is of smaller bandwidth, the present specification teaches just the opposite. That is, the present specification states that “[i]n some implementations, the OOB [enhancement] channel may be of **lower bandwidth than video service channels**, allowing for simpler and less expensive demodulation and decoding of the OOB data.” (Page 4, lines 13-15). (Emphasis added). Applicant respectfully submits that Claim 5 is non-obvious based on Carr for these additional reasons.

Response to the Rejection of Claims 13 and 14 under 35 U.S.C. § 103(a)

Claims 13 and 14 have been rejected under 35 U.S.C. 103(a) as being obvious based on Miller. Applicant respectfully traverses this rejection. The Examiner stated that, “**Miller fails to disclose that the video information is competent with the ATVEF standard for type A transport.**” (Office Action, page 11, last sentence) (Emphasis added).

Applicant respectfully submits that **by the Examiner’s own statement**, the Examiner has failed to set forth a *prima facie* case of obviousness. “The examiner “bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.” M.P.E.P. § 2142. “To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant’s disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).” M.P.E.P. § 2142.

Claim 13 recites “transferring video information, compliant with the ATVEF standard for type A transport, to a transmission system.” Applicant submits that at least this feature of claim 13

is not taught or suggested by Miller. In the Office Action, the Examiner admitted this in stating that "Miller fails to disclose that the video information is competent with the ATVEF standard for type A transport." Applicant respectfully submits, therefore, that by the Examiner's own statement, the Examiner has failed to set forth a prima facie case of obviousness. Thus, Applicant respectfully submits that Claim 13 is non-obvious based on Miller for at least this reason. Claim 14 depends from Claim 13 and is thus respectfully submitted as being non-obvious based on Miller for the same reasons given for Claim 13.

Response to the Rejection of Claims 20-23, 38 and 42-43 under 35 U.S.C. § 103(a)

The Examiner rejected Claims 20-23, 38 and 42-43 under 35 U.S.C. § 103(a) as being obvious based on Carr in view of Miller.

Claims 20-23 depend directly or indirectly from Claim 1, as amended, and thus are respectfully submitted as being non-obvious based on Carr for the same reasons given above for Claim 1. Applicant respectfully submits that Miller does not teach or suggest, either singly or combined with Carr, the method of transmitting data as claimed in Claim 1, including transmitting a video program and at least one trigger employing a first television channel. Claim 20-23 are thus respectfully submitted as being non-obvious based on Carr in view of Miller for the same reasons given for Claim 1 above.

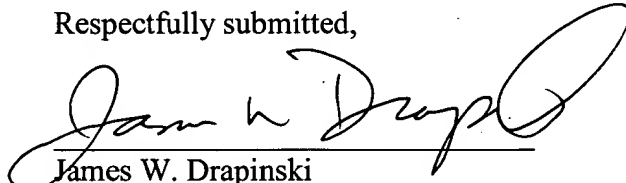
Claims 38, 42, and 43 depend directly or indirectly from Claim 34 and thus are respectfully submitted as being non-obvious based on Carr for the same reasons given above for Claim 34. Applicant respectfully submits that Miller does not teach or suggest, either singly or combined with Carr, the system as claimed in Claim 34 including a receiver operable to receive a video program and at least one trigger on a first channel and operable to receive enhancement data on a second channel, as claimed in Claim 34. Claims 38, 42, and 43 are thus respectfully submitted as being non-obvious based on Carr in view of Miller for the same reasons given for Claim 34 above.

Conclusion

For the above reasons, Applicant respectfully submits that all pending claims, Claims 1-15, 18-25, and 30-55, in the present application are allowable. Such allowance is respectfully solicited.

If a telephone conference would expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (415) 984-8200.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James W. Drapinski", written over a horizontal line.

James W. Drapinski
Registration No. 46,242

November 14, 2006

Date

NIXON PEABODY LLP

Suite 900, 401 9th Street, N.W

Washington, D.C. 20004-2128

(415) 984-8200